Supreme Court, U.S.
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No. 01-1290

In The

Supreme Court of the United States

SAM MCINNIS AND TIM SHINGLETON,

Petitioners,

v.

PAMELA ALICE LITTLE DANIEL,
AS ADMINISTRATRIX OF THE
ESTATE OF JOE ED DANIEL,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Alabama

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondent disagrees with the "Questions Presented" in the Petition, as will be explained within. Respondent asserts that the following are the questions pertinent to a decision whether to grant the petition for certiorari:

1. Whether there is a final judgment below sufficient to invoke review by this Court pursuant to 28 U.S.C. § 1257(a)?

2. If so, whether this Court should nevertheless decline to exercise jurisdiction because of the preliminary, fact-dependent, and undeveloped character of the presentation of and rulings on the assertions regarding Petitioners' contacts with Alabama?

3. Was there error, much less error of constitutional magnitude, in the Supreme Court of Alabama's holding that Petitioners did not present in their mandamus petition an indisputable case for lack of minimum contacts, given the applicable standards of review and the avowed non-finality of the denial of their motions to dismiss and the denial of their mandamus petition?

PARTIES TO THE PROCEEDING

Respondent Pamela Alice Little Daniel, as Administratrix of the Estate of Joe Ed Daniel, will be referred to herein as Mrs. Daniel or Plaintiff. She is the widow of Joe Ed Daniel, whose death is the subject of the wrongful death action against Petitioners and other defendants in the Circuit Court of Baldwin County, Alabama. In the years just preceding Mr. Daniel's death, Petitioner Sam McInnis ("McInnis") was the Vice President of Sales and then the Chief Executive Officer of the corporations that produced and marketed the explosive, but deceptively labeled as non-explosive, product known as "fix a flat"[1] that killed Mr. Daniel. In the same time period Petitioner Tim Shingleton ("Shingleton") was a Regional Sales Manager or Vice President of Sales and then President of Operations of the two corporations that successively marketed fix a flat just prior to Mr. Daniel's death. From September 1993 through March 1995, the relevant corporation was Snap Products, Inc. From April 1995 through the time of Mr. Daniel's death on June 4, 1997, and until November 1997, the relevant corporation was Snap Automotive Products, Inc. Michael Borka, whose petition for mandamus the Supreme Court of Alabama granted, was Chief Financial Officer of Snap Automotive Products, Inc., from April 1995 through November 1997. (App. A to

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[1] The name of this product is written in various ways in these proceedings. Photographic exhibits in the trial record show the name without capital "F's" or hyphens and with a trademark symbol following "fix a flat."

PARTIES TO THE PROCEEDING – Continued

Petition, p. 10a.) McInnis and Shingleton were officers of Snap Products, Inc., when they, together with Borka, formed Snap Automotive Products, Inc., and caused it to purchase Snap Products, Inc., in April 1995. (*Id.*; App. A to this Brief, ¶ 56.)

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BRIEF IN OPPOSITION TO CERTIORARI

Mrs. Daniel respectfully submits that Petitioners McInnis and Shingleton have overstated the precedential importance of the denial of mandamus by the Supreme Court of Alabama and have ignored its lack of finality. In the introductory paragraph of their Petition, McInnis and Shingleton assert that their supposedly "very limited contacts" with Alabama "have nothing to do with" Mrs. Daniel's cause of action. (Petition, p. 1.) On the contrary, their tortious conduct resulted in the sale in Alabama of the dangerous product that caused Mr. Daniel's death. They further erroneously state that the Supreme Court of Alabama has "attribut[ed] to defendants the actions of other parties," *id.*, when it is the personal actions of McInnis and Shingleton that principally caused the production and sale of the explosive and dangerously mislabeled fix a flat product that caused Mr. Daniel's death. Thus, even aside from the jurisdictional and prudential concerns argued as issues one and two below, this case presents no color of merit that would justify granting the Petition.

OPINION BELOW

Because the opinion of the Supreme Court of Alabama remains unpublished, Respondent will cite to the copy of that opinion presented to the Court as "App. A to Petition."

JURISDICTION

As a threshold matter, this Court lacks jurisdiction because there is no final judgment below. The Supreme Court of Alabama has expressly held that " '[T]he denial of relief by mandamus does not have *res judicata* effect.' " *Ex parte Shelton*, [Ms. 1990366, Sept. 7, 2001; 2001 WL 1021585, p. **3] ___ So.2d ___, ___ (Ala. 2001) (alteration in original; citations omitted). In the opinion now under review, the Supreme Court of Alabama expressly noted the interlocutory nature of a denial of a motion to dismiss

for lack of *in personam* jurisdiction, Ala.R.Civ.P. 12(b)(2), and the non-final nature of the denial of mandamus. (App. A to Petition, pp. 3a-4a, 18a.) Therefore, Petitioners erroneously invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a), which requires a "[f]inal judgment[ ] . . . rendered by the highest court of a State."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"[T]he Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." U.S. Const. art. III, § 2, ¶ 3. "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of . . . the United States." 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Pursuant to Rule 15.2 of the Rules of this Court, Mrs. Daniel will address the facts that bear on what issues would be before the Court if certiorari were granted. The Petition seriously understates the facts which support the exercise of *in personam* jurisdiction over Petitioners. For example, Petitioners attached as an appendix a drastically edited version of the Amended Complaint that does not present to this Court the many uncontested allegations of fact supporting jurisdiction. Mrs. Daniel therefore attaches as App. A to this Brief In Opposition the entire Amended Complaint. The complete allegations of that complaint, together with the affidavits filed by Petitioners, provide the factual context in this case. The pertinent portions of the affidavits are quoted in the opinion of the Supreme Court of Alabama, App. A to the Petition, pp. 8a-10a.

The Amended Complaint alleges that Petitioners personally participated in formulating, manufacturing, labeling, and distributing the fix a flat product dangerously mislabeled as "non-explosive." (App. A to this Brief, *passim*, esp. ¶¶ 4, 11, 13-14, 42-57, 75, 81, and 83.) Little discovery took place between the filing of Plaintiff's original Complaint on December 18, 1998, and the denial of the motions to dismiss on June 23, 1999. (Respondent's brief, Supreme Court of Alabama Docket #1990045, Ex. 1, Case Action Summary.)[2] Mrs. Daniel offered in opposition to the motions to dismiss certain documents ("the *Olson* materials") from a similar action against some of these defendants in Minnesota.[3] (Mrs. Daniel's cross-petition, Supreme Court of Alabama docket #1990659, Exhibit 9.) These materials were directed principally at the activities of McInnis, because Shingleton was not named as a defendant in *Olson*. *Id.* However, Shingleton has admitted in his affidavit in this case that he was at the relevant times a regional director of sales, a vice president of sales, and then president of operations. (App. A to Petition, p. 10a.) These facts, coupled with the facts established against

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[2] The "record" on the petitions for mandamus consists only of exhibits that the Petitioners and the Respondents submitted to the Supreme Court of Alabama. Ala.R.App.P. 21. These materials are somewhat voluminous and would be difficult to duplicate, because they include handwritten notations, letterheads, and other materials that would not be amenable to typesetting. Because the points made regarding some of these exhibits in this and the succeeding paragraph are incidental and procedural, Mrs. Daniel is not appending them to this brief. However, if the Court were to grant the Petition, Mrs. Daniel would request that the exhibits referenced in these paragraphs would be made part of any Joint Appendix or record before this Court. *Cf.* Rule 12.7 of the Rules of this Court.

[3] *See Olson v. Snap Products, Inc.*, 29 F.Supp. 1027 (D. Minn. 1998).

McInnis personally in the *Olson* materials, support inferences that Shingleton, as well as McInnis, personally participated in the tortious marketing of the dangerous fix a flat product in Alabama and other states that caused – before Mr. Daniel's death – injuries at least in Arizona, Colorado, and Minnesota. (*See also* App. A to this Brief, ¶¶ 12-38, 58-67.)

The trial court (the Circuit Court of Baldwin County, Alabama) sustained Petitioners' objection to Mrs. Daniel's offer of the *Olson* materials as evidence in opposition to the motions to dismiss. (Respondent's Brief, Supreme Court of Alabama Docket #1990045, Ex. 1, Trial Court's Docket Entry of 7/15/99.) After Petitioners and Borka filed their mandamus petition, Mrs. Daniel filed a cross-petition for mandamus requesting that, if the Supreme Court of Alabama deemed the order denying the motion to dismiss to be infirm, the court would order further evidentiary proceedings, including the allowance of the *Olson* materials and the conduct of further discovery regarding the contacts of McInnis, Shingleton, and Borka with Alabama. (Petition for Writ of Mandamus, Supreme Court of Alabama Docket #1990659, esp. pp. 10-11.) The Supreme Court of Alabama denied relief on the cross-petition, deeming it moot as to McInnis and Shingleton, and not probative as to the contacts of Borka. (App. A to Petition, p. 20a.)

Mrs. Daniel does not contest the grant of mandamus relief in favor of Borka, who was the finance officer of Snap Automotive Products, Inc., from the time of acquisition of Snap Products, Inc., in April 1995 until the sale of that company to Pennzoil in 1997. McInnis and Shingleton were directly involved in operations and sales of both companies. Mrs. Daniel cannot at present make similar allegations against Borka, and his affidavit does not bridge the gap by admitting trips to Alabama on company business or official responsibility for sales and/or operations. (App. A to Petition, p. 10a.)

I. Factual Background

In April 1995, Petitioners and former Defendant Borka formed Snap Automotive Products, Inc., and purchased Snap Products, Inc. (App. A to this Brief, ¶ 56.) Snap Products, Inc., and then Snap Automotive Products, Inc., manufactured and sold an aerosol tire inflator product ("fix a flat") throughout the United States, including the State of Alabama. (*Id.*, ¶ 11.) From September 1993 to March 1995, McInnis was Vice-President of Sales, and Shingleton was a Regional Sales Manager or Vice-President of Sales. From April 1995 to November 1997, McInnis was Chief Executive Officer, and Shingleton was President of Operations. (App. A to Petition, p. 10a.) As Regional Sales Manager or Vice-President of Sales, Shingleton came to Alabama to promote sales of Snap products on four occasions that he admitted in his affidavits. (*Id.* at 8a-10a.) McInnis, in his capacity as Vice-President of Sales, also came to Alabama to promote the sales of Snap products in 1994 or 1995. (*Id.*, pp. 9a-10a.)[4]

Thus, even before they became the owners of the company, McInnis and Shingleton visited Alabama to promote the sales of Snap products. It can be inferred from the fact that Shingleton visited Alabama four times while he was a Regional Sales Manager that Alabama was within his region. Because little discovery occurred before the trial court proceeded to hear McInnis, Shingleton, and Borka's motions to dismiss, however, Plaintiffs have not cross-examined them regarding their affidavits or otherwise conducted discovery to determine what additional

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[4] Although their affidavits attempt to minimize the importance of fix a flat as a Snap product and its relevance to their Alabama trips, fix a flat was "the single largest revenue generating product sold by Nationwide/Snap, and of approximately 70 company products, sales of the 'fix a flat' product constitute[d] approximately half the company's revenue." (App. A to this Brief, ¶ 15.)

contacts they may have with Alabama beyond those admitted in their affidavits.

Important allegations about the participation of McInnis and, by inference, Shingleton in communications with Snap customers are found at paragraphs 39 and 47-51 of the Amended Complaint:

> 39. During 1990-1993, while Nationwide/Snap and Mr. McInnis were marketing their second generation HCFC non-flammable propellant "fix a flat" product, the company spent significant sums of money educating the public, and the tire inflator industry, as to the safety benefits of a non-flammable propellant tire inflator product in view of foreseeable rim welding and tire reaming activity.
>
> 47. On or about April 25, 1994, Mr. McInnis, along with "consultants" Montfort A. Johnsen ("Johnsen"), and Paul Hughett ("Hughett") attended a meeting in Kansas City, Missouri, with a customer (Western Auto Parts Company). Johnsen and Hughett had helped design and develop the third generation DME "fix a flat" product.
>
> 48. At the meeting with Western Auto on or about April 25, 1994, Mr. McInnis, with consultants Hughett and Johnsen, tried to sell Western Auto the DME "fix a flat" product. However, Western Auto informed McInnis, Johnsen, and Hughett that Western Auto's testing of the "fix a flat" revealed that the product was flammable/explosive and Western Auto would not purchase such a product.
>
> 49. In response to Western Auto's concerns regarding the flammability/explosivity of the DME fix a flat product, *Mr. McInnis informed Western Auto that if any accidents occurred involving the DME fix a flat product Snap would fully indemnify and reimburse Western Auto for any liability incurred under the provisions of Snap's*

> *$25,000,000 product liability insurance policy.* Western Auto decided not to do any business with Snap.
>
> 50. *On or about May 12, 1994, Snap and/or Mr. McInnis had tire explosion testing performed. . . . This testing revealed that certain mixtures of the "fix a flat" DME product with air in a tire were explosive and could propel the Ford Explorer tire and rim assemblies as much as 252 feet into the air.*
>
> 51. *Despite test results . . . in the Spring of 1994 indicating the DME fix a flat product was explosive, [other defendants] and Snap conspired to selectively omit tire explosion test sequences from testing reports which were sent to Snap's customers and the Consumer Product Safety Commission. The selectively edited testing reports created the illusion that the fix a flat DME product was safe and non-explosive.*

(App. A to this Brief, ¶¶ 39 and 47-51; emphasis added.) Fix a flat was Snap's flagship product and largest source of revenue (*Id.*, ¶ 15.) As Vice-President of Sales at the time, McInnis would have had responsibility for sending the deceptively edited test sequences to Snap customers (*id.*, ¶¶ 50-51), including those in Alabama. As Regional Manager or Vice-President of Sales, Shingleton would have had similar responsibility. They do not deny in their affidavits that they communicated with Snap customers in Alabama as alleged in paragraphs 39 and 51, together with paragraph 11 of the Amended Complaint. (*Id.*, ¶¶ 11, 39, 51.) Of course, the responsibilities of McInnis and Shingleton for marketing this dangerous product in Alabama would have *increased* when they became, in April 1995, the owners and, respectively, Snap's Chief Executive Officer and President of Operations. (*Id.*, ¶ 56.)

Just a few months after Mr. Daniel's death, McInnis, Shingleton and Borka sold Snap at a handsome profit. (*Id.*, ¶ 71.) The national marketing of Snap's most important product was vital to the Petitioners' effort to sell the company for a profit a mere two and a half years after its purchase.

All that Petitioners deny in their affidavits is frequent physical presence in Alabama. Their affidavits say nothing about their marketing efforts directed toward Alabama, or the number of Snap customers selling fix a flat in Alabama, or anything else to contradict the allegations of the Complaint that they personally directed a marketing campaign of this product that they knew to be dangerous and dangerously mislabeled. They do not deny that this marketing campaign was directed at Alabama or that they were personally responsible for it. They do not deny knowing in the two years prior to Mr. Daniel's death of at least three explosions of the product in Arizona, Colorado, and Minnesota.

Petitioners bore personal responsibility for the distribution of Snap products, including fix a flat, into Alabama, and they have all but admitted it. Certainly their mere denials of frequent physical presence in Alabama do not contradict the direct allegations and available inferences of the Complaint that, as directors of sales and later as owners and directors of the entire corporation, they purposefully marketed and sold in Alabama a dangerous and dangerously mislabeled product.

REASONS FOR DENYING THE WRIT

I. The Judgment Below Is Interlocutory, Not Final, So This Court Does Not Have Jurisdiction

In *Jefferson v. City of Tarrant, Alabama*, 522 U.S. 75 (1997), this Court dismissed the writ of certiorari for want of jurisdiction, because "This case, still *sub judice* in Alabama, was brought to this Court too soon." *Id.* at 77. This Court stated, in remarks directly pertinent here:

> The decision we confront does not qualify as a "final judgment" within the meaning of [28 U.S.C.] § 1257(a). The Supreme Court of Alabama decided the federal-law issue on an interlocutory certification from the trial court, then remanded the cause for further proceedings on petitioners' remaining state-law claims. The outcome of those

> further proceedings could moot the federal question we agreed to decide. If the federal question does not become moot, petitioners will be free to seek our review when the state-court proceedings reach an end. We accordingly dismiss the writ for want of a final judgment.

Id. at 77-78. *See also Florida v. Thomas*, 532 U.S. 774 (2001) (Supreme Court of Florida upheld trial court's interlocutory order granting a motion to suppress evidence; this Court dismissed its writ for want of jurisdiction.)

Exactly the same posture is presented by this Petition for Certiorari, except that here, the Supreme Court of Alabama decided the federal-law issue on a petition for writ of mandamus pursuant to Ala.R.App.P. 21, whereas in *Jefferson*, the Supreme Court of Alabama decided the federal-law issue on an interlocutory certification pursuant to Ala.R.App.P. 5. That is a distinction without a difference, because the Supreme Court of Alabama has held that a denial of a petition for a writ of mandamus does not operate as *res judicata* upon further proceedings in the subject action. *Ex parte Shelton*, [Ms. 1990366, Sept. 7, 2001; 2001 WL 1021585], ___ So.2d ___ (Ala. 2001), and cases cited therein. Moreover, the Supreme Court of Alabama expressly recognized that its denial of mandamus here did not end the question of *in personam* jurisdiction over Petitioners (App. A to Petition, pp. 3a-4a, 18a), so its decision "was avowedly interlocutory." *Jefferson, supra*, 522 U.S. at 81.

Petitioners cite *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30, 31 (1916), and *Fisher v. District Court*, 424 U.S. 382, 385 n. 7 (1976), as supporting the exercise of jurisdiction over this petition. *Mt. Vernon-Woodberry* and *Fisher*, however, merely hold that "[a] judgment that terminates original proceedings in a state appellate court, in which the only issue decided concerns the jurisdiction of a lower state court, is final even if further proceedings are to be had in the lower

court." *Fisher*, 424 U.S. at 385, n. 7 (citations omitted).[5] This principle cannot apply if the state appellate court's judgment terminating the original proceedings therein is, by its own terms, *not* final as to the issue raised. As the Supreme Court of Alabama said, "[w]hether the plaintiff can prove her allegations against the defendants McInnis and Shingleton and can thereby maintain personal jurisdiction at the stages of the litigation that require proof as distinguished from pleadings remains to be seen." (App. A to Petition, p. 18a). The entire tenor of the opinion below is consistent with the holding of *Ex parte Shelton*, *supra*, and the cases cited therein. For example, the court pointed out the heavy burden on a mandamus petitioner:

> A writ of mandamus is an *extraordinary remedy* which requires a showing of (a) *clear legal right* in the petitioner to the order sought, (b) an *imperative duty* on the respondent to perform, accompanied by a refusal to do so, (c) the *lack of another adequate remedy*, and (d) the properly invoked jurisdiction of the court.

(App. A to Petition, p. 4a; emphasis added.) The Supreme Court of Alabama later tied this burden to the interlocutory nature of the 12(b)(2) denial by quoting from a special concurrence in *Ex parte Sekeres*, 640 So.2d

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[5] Footnote 7 of *Fisher* cites three cases, *Madruga v. Superior Court*, 346 U.S. 556, 557 n. 1 (1954); *Rescue Army v. Municipal Court*, 331 U.S. 549, 565-568 (1947); *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8, 14-15 (1931); and one additional case with a "see" signal, *Costarelli v. Massachusetts*, 421 U.S. 193, 197-199 (1975), which is actually consistent with Mrs. Daniel's argument herein, *id.*, at 196. *Mt. Vernon* cites an 1829 opinion by Chief Justice Marshall, *Weston v. Charleston*, 27 U.S. (2 Pet.) 449, 464-65 (1829). These cases involved challenges to the subject matter jurisdiction of the lower court, not *in personam* jurisdiction. The denial of prohibition finally ended the matter, because there were no further factual inquiries to be addressed by the lower court after prohibition was denied.

640, 642 (Ala. 1994). There, Supreme Court of Alabama Associate Justice Gorman Houston noted that, on the bare record of a mandamus proceeding, it is difficult for a reviewing court to say that a trial court "clearly erred in denying [a] motion to dismiss or that [a defendant] has a clear and undisputable right to be dismissed from this action." *Id.*, quoted at App. A to Petition, p. 18a.

The non-finality of the denial of mandamus is compounded by the non-finality of a denial of a Rule 12(b)(2) motion to dismiss. Again, the Supreme Court of Alabama made this very point: "After such a denial, the continuation of personal jurisdiction over a defendant who appropriately persists in challenging it in the defendant's answer to the complaint and by motion for summary judgment or at trial depends on the introduction of substantial evidence to prove the plaintiff's jurisdictional allegations in the plaintiff's complaint." (App. A to Petition, p. 4a; citations omitted.) Petitioners thus seek review of a non-final judgment from the Supreme Court of Alabama refusing to set aside a non-final order of the Circuit Court of Baldwin County, Alabama.

As this Court stated in *Jefferson v. City of Tarrant, Alabama, supra*:

> This provision [§ 1257(a)] establishes a firm final judgment rule. To be reviewable by this Court, a state-court judgment must be final "in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market Street R. Co. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 551 (1945). As we have recognized, the finality rule "is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945).

Jefferson, 522 U.S. at 81. If the courts of Alabama continue to assert personal jurisdiction over Petitioners, if a final judgment on the merits is rendered against them and affirmed on appeal, and "[e]ven if the Supreme Court of Alabama adheres to its interlocutory ruling as 'law of the case,' that determination will in no way limit [this Court's] ability to review the issue on final judgment." *Id.* at 83.

The inconvenience to Petitioners of renewing their objections to the exercise of jurisdiction over them provides no reason to ignore the mandate of Congress in 28 U.S.C. § 1257(a) or the principles of comity and federalism that support Congress' decision to grant this Court jurisdiction to review state court judgments *only* after they become final. Denial of interlocutory review *necessarily* requires an allegedly aggrieved party to continue litigating the question, so it is no answer for Petitioners to complain that they would prefer to terminate this litigation against them sooner rather than later. Quite plainly, Petitioners do not "enjoy a right not to stand trial . . . entailed in the mere assertion that the District Court lacks personal jurisdiction." *Van Cauwenberghe v. Biard*, 486 U.S. 517, 526-27 (1988). As this Court has stated:

> In the context of due process restrictions on the exercise of personal jurisdiction, this Court has recognized that the individual interest protected is in "not being subject to the binding judgments of a forum with which [the defendant] has established no meaningful 'contacts, ties, or relations.' " . . . Because the right not to be subject to a binding judgment may be effectively vindicated following final judgment, we have held that the denial of a claim of lack of jurisdiction is not an immediately appealable collateral order.

Id. (brackets in original; citations omitted).[6] This principle applies with great force to the present matter.

Mt. Vernon-Woodberry and its progeny, including *Fisher*, are further distinguishable. Both cases, as well as those cited in footnote 7 of *Fisher*, involved petitions for a writ of prohibition raising *facial challenges* to the exercise of *subject matter* jurisdiction by inferior courts. In *Mt. Vernon-Woodberry*, for example, the Court began its discussion by saying that "Prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of the Judicial Code." 240 U.S. at 31. A denial of prohibition where the reviewing court finally decides the question of whether an inferior court has subject-matter jurisdiction under a statute is entirely different, for purposes of finality analysis, from a denial of mandamus in which the reviewing court expressly states that the question presented remains open. The critical distinction lies in the *Mt. Vernon-Woodberry* Court's notation that a "judgment *finally* disposing of" a petition for prohibition is a final judgment. The Supreme Court of Alabama has expressly held that its denial of mandamus is not "final" in any meaningful sense, a decision on a matter of state procedure that this Court should not controvert.

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[6] See also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980):

> The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal *judgment* against a nonresident defendant. . . . A *judgment* rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere.

(Citations omitted; emphasis added.)

II. Even If This Court May Have Jurisdiction, It Should Decline To Exercise It

A. Even a Final Denial of An Extraordinary Writ Does Not Require This Court to Take Jurisdiction

Most of the *Fisher/Mt. Vernon-Woodberry* line of cases involved the appellate jurisdiction of the Supreme Court that was repealed in 1988. *See* former 28 U.S.C. § 1257, before amendment by Pub. L. 100-352, §§ 3 and 5, June 27, 1988, 102 Stat. 662, 664. Even under its former appellate jurisdiction, the Court exercised discretionary authority and declined to exercise jurisdiction in *Rescue Army, supra,* at n. 5, dismissing the appeal. The *Rescue Army* Court discussed the rule from *Bandini, supra,* at n. 5, and earlier cases that a denial of prohibition creates an appealable final judgment, but concluded that "[w]hile therefore we are unable to conclude that there is no jurisdiction in this cause, nevertheless compelling reasons exist for not exercising it." 331 U.S. 549, 565-67. The Court then discussed those "compelling reasons," beginning with the "policy of strict necessity in disposing of constitutional issues." *Id.* Significant in that discussion is footnote 34:

> "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality * * * unless such adjudication is unavoidable." . . . It has long been the Court's "considered practice not to decide abstract, hypothetical or contingent questions * * * or to decide any constitutional question in advance of the necessity for its decision. . . . "

Id. at 570 n. 34 (citations omitted). The Court concluded that "the shape in which the underlying constitutional issues have reached this Court presents, we think, insuperable obstacles to any exercise of jurisdiction to determine them, [including] obstacles of prematurity and comparative abstractness." *Id.* at 574. If these sorts of considerations persuaded the Court to decline to exercise *appellate*

jurisdiction in *Rescue Army*, they provide even more compelling persuasion that this Court should deny *certiorari* where the question is undeveloped, abstract, and premature.

The *Bandini* Court held that it had jurisdiction over an appeal from a denial of a writ of prohibition that "merely dealt with the jurisdiction of the Superior Court of the suit for injunction, and the only question before us is whether the District Court of Appeal erred in deciding the federal questions as to the validity of the statute upon which that jurisdiction was based. Moreover, *with all questions of fact* . . . we are not concerned on this appeal." *Bandini, supra*, 284 U.S. 8, 14 (emphasis added). *In personam* jurisdiction is necessarily dependent upon the facts of the defendants' contacts with the forum state, and this Court should "not [be] concerned" with such factual questions when the court below held only that the matters presented at a preliminary stage did not demonstrate unequivocally that Plaintiff could prove no facts supporting jurisdiction over Petitioners. Only after those facts have been finally litigated and a final judgment entered against Petitioners based on a factual finding that they are subject to the jurisdiction of Alabama would the question be ripe for this Court's review.

B. The Better View of the *In Personam* Cases is That This Court Should Grant Review Only After a Final Judgment Against the Objecting Defendant

This Court's landmark *in personam* decisions are discussed, *infra*, regarding their "minimum contacts" analyses. For present purposes, Mrs. Daniel points out that some of these cases arose after a denial of a motion to dismiss, a trial, and a final judgment against the objecting defendant, while other cases arose from pre-trial postures with no discussion of the Court's jurisdiction. The few cases where the Court has discussed its jurisdiction to

entertain appeals or certiorari petitions in preliminary postures are either distinguishable (as in *Shaffer v. Heitner*, *infra*) or based on questionable support (as in *Kulko*, *infra*).

In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), the *in personam* issue was brought to this Court after a final judgment. Burger King, a Florida corporation, brought suit in Florida against two individual Michigan franchisees, who entered special appearances and moved for dismissal. The district court denied their motions. *Id.*, at 469. They then filed an answer and counterclaim. After a three-day bench trial, the court again concluded that it had jurisdiction over the parties. *Id.* The trial court entered a final judgment against them and they appealed to the Eleventh Circuit. That court reversed, holding that the defendants did not have sufficient contacts with Florida to support the district court's exercise of jurisdiction over them. This Court reversed, holding that the defendants had established minimum contacts.

This Court also addressed *in personam* jurisdiction after a trial on the merits in *Helicopteros Nacionales De Columbia, S.A. v. Hall*, 466 U.S. 408 (1984). Four wrongful death actions were filed in a Texas state court against a Colombian corporation (Helicol) engaged in the business of providing helicopter transportation for oil and construction companies in South America. *Id.*, at 409. Helicol filed special appearances and moved to dismiss the actions for lack of *in personam* jurisdiction. The Texas court denied the motion, held a jury trial, and entered a final judgment on a verdict against Helicol. Helicol appealed to the Texas Court of Civil Appeals, which reversed for lack of *in personam* jurisdiction. The plaintiffs then appealed to the Supreme Court of Texas, which reversed, holding that the trial court had properly exercised jurisdiction. *Id.*, at 412. This Court reversed, holding that minimum contacts were not shown.

In *Asahi Metal Industry Company, Ltd. v. Superior Court*, 480 U.S. 102 (1987), the *in personam* issue reached this Court in a preliminary posture. After the trial court denied

a motion to quash summons on Asahi, a Japanese corporation, the intermediate appellate court "issued a peremptory writ of mandamus commanding the [trial court] to quash service of summons." *Id.* at 107. The California Supreme Court then reversed and discharged the writ issued by the intermediate appellate court. *Id.* at 108. This Court reached the merits with no discussion of whether there was a final judgment that would support jurisdiction under 28 U.S.C. § 1257.

In *Calder v. Jones*, 465 U.S. 783 (1984), two Florida defendants "caused special appearances to be entered [in California] on their behalf, moving to quash the service of process for lack of personal jurisdiction. The Superior Court granted the motion," *id.*, at 784-85, the California Court of Appeals reversed, *id.*, at 785, and the California Supreme Court denied a petition for hearing, *id.*, at 787. This Court, addressing the question of whether there was a final judgment, stated:

> Although there has not yet been a trial on the merits in this case, the judgment of the California appellate court "is plainly final on the federal issue and is not subject to further review in the state courts." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 485 (1975). Accordingly, as in several past cases presenting jurisdictional issues in this posture, "we conclude that the judgment below is final within the meaning of [28 U.S.C.] § 1257." *Shaffer v. Heitner*, 433 U.S. 186, 195-196, n. 12 (1977). See also *Rush v. Savchuk*, 440 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978).

Calder v. Jones, 465 U.S. at 788, n. 8.[7] However, the quoted language from *Cox Broadcasting* cannot govern the present

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[7] The Court exercised jurisdiction in *Rush*, *World-Wide Volkswagen*, and *Kulko*, but did not engage in any discussion of how and why it had jurisdiction. See *Rush*, 444 U.S. at 324-25, and 433 U.S. 902 (1977), noting probable jurisdiction without further comment; *World-Wide*, 444 U.S. at 289-291; and *Kulko*,

case, because the Supreme Court of Alabama expressly held that its judgment is *not* final on the federal issue and *is* subject to further review in the state courts.

In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 485-86 (1975), a Georgia trial court granted summary judgment for the plaintiff on liability in his invasion of privacy action and ordered a trial on damages. The defendants claimed that their broadcasts were privileged under the First and Fourteenth Amendments. *Id.*, at 474. The Georgia Supreme Court affirmed the interlocutory liability judgment, holding that a Georgia statute making it unlawful to disseminate the name of a rape victim was constitutional as against the defendant's invocation of the First Amendment. *Id.*, at 475. This Court addressed the question of jurisdiction, sorting its prior decisions into "four categories of . . . cases in which the Court has treated the decision on the federal issue as a final judgment" even though there "are further proceedings in the lower state courts to come." *Id.*, at 477. The first category applies where "the federal issue is conclusive or the outcome of further proceedings preordained." *Id.*, at 478. There is nothing "conclusive or . . . preordained" about further state court proceedings in the present matter. To the contrary, Petitioners can point only to a tentative refusal to set aside a preliminary denial of a weakly supported assertion of a lack of minimum contacts.

The second *Cox Broadcasting* category comprises cases "in which the federal issue, *finally decided* by the highest court in the State, will survive and require a decision regardless of the outcome of future state-court proceedings." *Id.*, at 480 (emphasis added). There is nothing "finally decided by" the Supreme Court of Alabama, and the federal issue may very well not survive for any

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436 U.S. at 90, finding no jurisdiction by appeal, but treating the papers as a petition for certiorari pursuant to *Hanson v. Denckla* and *May v. Anderson, infra*, and explaining in footnote 4 why appellate jurisdiction does not lie but not explaining why certiorari jurisdiction does lie.

number of reasons. For example, after discovery, Petitioners' contacts with Alabama may prove overwhelming, and they may concede jurisdiction. Alternatively, if their contacts prove to be no more than they have admitted in their affidavits, and their commercial activities prove not to have resulted in colorable contacts with Alabama in the sale and marketing of fix a flat, the state trial court remains free to hold that contacts have not been established as a factual matter. Moreover, just as in *Jefferson v. City of Tarrant, supra,* "[r]esolution of the state-law claims could effectively moot the federal-law question raised here." 522 U.S. 75, at 82.

The third category includes cases "where the federal claim has been *finally decided,* with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Id.,* at 481 (emphasis added). This category is not implicated here because, as stated in *Van Cauwenberghe, supra,* Petitioners have no right to avoid a trial, and as can be seen from *Burger King* and *Helicopteros, supra,* they can raise their due process argument after a trial.

Cox Broadcasting described the fourth category as follows:

> Lastly, there are those situations where the *federal issue has been finally decided* in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on non-federal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. In these circumstances, if a refusal to immediately review the state court decision might seriously erode federal policy, the Court has entertained and decided *the federal*

> *issue, which itself has been finally determined* by the state courts for purposes of the state litigation.

Id., at 482-83 (emphasis added). Again, the issue has not been "finally determined." Moreover, requiring Petitioners to continue defending these claims against them, conditioned upon substantiation of the allegations contained in the Amended Complaint, can hardly be said to "seriously erode federal policy."

Shaffer v. Heitner, 433 U.S. 186, 195-96, n. 12 (1977), cited the *Cox Broadcasting* analysis in the context of a jurisdictional challenge arising before trial. The circumstances of *Shaffer*, however, differ greatly from those here. The Delaware law at issue in *Shaffer* required defendants to "enter a general appearance, thus subjecting themselves to *in personam* liability, before they [could] defend on the merits." *Id.* Quite the contrary is true here. Even if, after further proceedings in the trial court, the trial court continues to assert jurisdiction over Petitioners, they will still be able to raise their due process argument in any appeal from a judgment against them on the merits. *Shaffer* quoted *Cox Broadcasting* as follows:

> "The (Delaware) Supreme Court's judgment is *plainly final on the federal issue* and is *not subject to further review in the state courts*. Appellants will be liable for damages if the elements of the state cause of action are proved. They may prevail at trial on non-federal grounds, it is true, but *if the (Delaware) court erroneously upheld the statute, there should be no trial at all.*"

Id. (alteration in *Shaffer*; citation omitted; emphasis added). A *facial challenge* to a statute is not fact-dependent and its rejection on appeal finally resolves the question. Those factors provide this Court's jurisdiction, not the exhortation that "there should be no trial at all." The present case, unlike *Shaffer*, involves only a non-final rejection of a threshold claim that a *factual showing* cannot be made.

Moreover, the rule of *Van Cauwenberghe, supra*, that the Fourteenth Amendment protects against a *final judgment* without due process, not against an erroneous holding of a

trial, further distinguishes this case from *Shaffer* and *Cox Broadcasting*. Petitioners cannot be heard at this stage to say that "there should be no trial at all," because the Supreme Court of Alabama has expressly preserved their right to renew and substantiate their challenge to the jurisdiction of the Alabama courts over them. Little or no judicial economy could be gained by addressing Petitioners' arguments now, because a holding in their favor would not avoid the need for a trial. There will be a trial in any event against at least the remaining defendants. If this Petition is denied, if the state trial court holds a trial and enters a judgment against all the defendants, if Petitioners appeal from that judgment, and if the Supreme Court of Alabama holds that the trial court erred in continuing to exercise jurisdiction over them, a reversal of the judgment against Petitioners would not require a reversal of the judgment against the other defendants. Thus, an erroneous assertion of jurisdiction over Petitioners through a trial on the merits would not require a retrial as to other defendants. In short, as the Court said in *Jefferson v. Tarrant City*, *supra*, Petitioners have simply come here "too soon." 522 U.S. at 77.

Hanson v. Denckla, 357 U.S. 235 (1958), did not present any question of finality. The procedural holding that was alluded to in *Kulko*, *supra*, at n. 7, was stated in the following paragraph:

> The question of our jurisdiction was postponed until the hearing of the merits. The appeal is predicated upon the contention that as applied to the facts of this case the Florida statute providing for constructive service is contrary to the Federal Constitution. 28 U.S.C. § 1257(2). But in the state court appellants (the "beneficiaries") did not object that the statute was invalid as applied, but rather that the effect of the state court's exercise of jurisdiction in the circumstances of this case deprived them of a right under the Federal Constitution. Accordingly, we are without jurisdiction of the appeal and it must be dismissed. . . . Treating the papers whereon appeal was

> taken as a petition for certiorari, 28 U.S.C. § 2103, certiorari is granted.

357 U.S. at 244 (footnote and citations omitted). Thus, the only issue depended on differences between appellate jurisdiction and certiorari jurisdiction and the *Hanson* Court in no way implied that certiorari will lie to review a non-final ruling from a state court. The Florida decree at issue in *Hanson* declared that the beneficiaries took the disputed property under the will; the Delaware decree declared that the appointees under the power of appointment in the trust took the property. There is no indication that either decree suffered any lack of finality. The only question was whether the Florida decree was void for lack of *in rem* jurisdiction over the corpus of the Delaware trust or *in personam* jurisdiction over the Delaware trustee. Thus, the citation to *Hanson* in *Kulko*, 436 U.S. 84, at 90, n. 4, does not support the exercise of jurisdiction in *Kulko* over a non-final judgment.

Nor does *May v. Anderson*, 345 U.S. 528 (1953), involve any question as to finality of the judgment below. An Ohio probate court, "proceeding to the merits of the case ," *id.*, at 529, granted a father's petition for a writ of habeas corpus and ordered the mother to give up custody of the couple's children, rejecting the mother's argument that the *ex parte* Wisconsin divorce decree obtained by the father was void for lack of *in personam* jurisdiction over her. The intermediate appellate court of Ohio affirmed, and the Supreme Court of Ohio denied review. *Id.*, at 529-530. As in *Hanson*, the Court "treated the appeal as a petition for a writ of certiorari." *Id.*, at 530. The attempt to invoke appellate jurisdiction was based on an Ohio statute upon which "neither the Court of Appeals nor the Supreme Court of Ohio relied." *Id.* This again provides no support for the apparent conclusion in *Kulko* that certiorari jurisdiction will lie to review a non-final judgment even though appellate jurisdiction will not lie.

Close study of the pertinent cases along the lines suggested above supports at least a prudential decision not to entertain certiorari in this case. Thus, even if this

Court disagrees with the argument in Part I above that the opinion below is not final so as to support review, the fact that in a number of these cases the issue came up only after a trial on the merits suggests that this Court should decline to exercise jurisdiction. The correctness of that conclusion will be even more evident after the Court considers the arguments in the following section of this brief.

III. Petitioners Make No Showing Of A Due Process Violation

Even if the foregoing jurisdictional and prudential concerns did not exist, there would be no issue here worthy of issuing a writ of certiorari. The decision of the Supreme Court of Alabama is consistent with this Court's precedents, and there is no need for this Court to engage in academic, abstract rumination about potential tests for "arising out of" or "related to," as the Petition asks the Court to do.

The posture of this matter affects its merits as well as the Court's jurisdiction. There was no evidentiary hearing; the circuit judge simply heard oral arguments of counsel on this motion and others at a motion docket. Petitioners and Borka had recently submitted affidavits that did little more than deny frequent physical presence in Alabama, and Plaintiff had not conducted discovery on this question prior to the hearing. The trial court denied the motions to dismiss, apparently agreeing with Plaintiff's position that the affidavits insufficiently denied contacts with Alabama and that the uncontradicted allegations of the Complaint were sufficient to support the exercise of personal jurisdiction, at least in the posture then presented.

The Supreme Court of Alabama agreed, applying the following standard of review:

> In considering a Rule 12(b)(2), Ala.R.Civ.P., motion to dismiss for want of personal jurisdiction, a court must consider as true the allegations of the plaintiff's complaint not controverted by the defendant's affidavits, *Robinson v. Giamarco & Bill, P.C.*, 74 F.3d 253 (11th Cir. 1996), and *Cable/*

> *Home Communication Corp. v. Network Productions, Inc.*, 902 F.2d 829 (11th Cir. 1990), and "where the plaintiff's complaint and the defendant's affidavits conflict, the court must construe all reasonable inferences in favor of the plaintiff." *Robinson*, 74 F.3d at 255 (quoting *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990). "For purposes of this appeal [on the issue of *in personam* jurisdiction] the facts as alleged by the . . . plaintiff will be considered in a light most favorable to him [or her]." *Duke v. Young*, 496 So.2d 37, 38 (Ala. 1986).

(App. A to Petition, p. 3a.) Thus, the question becomes whether Petitioners can show constitutional error despite the "allegations of the plaintiff's complaint not controverted by the defendants' affidavits, . . . construe all reasonable inferences in favor of the plaintiff." *Id.*

Burger King Corp. v. Rudzewicz, supra, provides ample support for the conclusion that *in personam* jurisdiction exists here. The following paragraph from *Burger King* is especially pertinent:

> We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who "purposefully directs" his activities toward forum residents. A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. . . . Moreover, where individuals "purposefully derive benefit" from their interstate activities, . . . it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because "modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State

> where he engages in economic activity," it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity.

471 U.S. at 473-74 (citations omitted). Given the uncontested allegations of the Amended Complaint in this case, the foregoing passage from *Burger King* provides more than enough authority for a finding that the Supreme Court of Alabama was absolutely correct to deny Petitioners' writ of mandamus.

But there is more support in *Burger King* for the Supreme Court of Alabama's decision. There the Court held that the reasonableness of jurisdiction may be established "upon a lesser showing of minimum contacts than would otherwise be required":

> Thus courts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." . . . These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.

Burger King, 471 U.S. at 476-77 (citations omitted). These principles refute Petitioners' argument that the Supreme Court of Alabama erred in considering the reprehensibility of their alleged conduct in determining whether "a lesser showing of minimum contacts than would otherwise be required" properly supported the Alabama court's assertion of *in personam* jurisdiction over them. Alabama has an interest in adjudicating the dispute as a means of protecting its citizens against a defendant from a nearby state whose highly culpable wrongdoing has caused death in Alabama. "The interstate judicial system's interest in obtaining the most efficient resolution of controversies," *id.*, applies because Alabama has jurisdiction over

numerous other joint tortfeasors. These interests "establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required." *Id.* The Supreme Court of Alabama has therefore properly relied on the principles established by this Court, and Petitioners' assertion that "the Supreme Court of Alabama has taken an extreme position" (Petition, p. 1) is simply wrong.

In *Burger King*, this Court upheld the district court's assertion of jurisdiction over defendants Rudzewicz and MacShara despite their having few or no physical ties to Florida. Noting that MacShara had been there for a single brief training course, but "for all that appears from the record, [Rudzewicz] has never even visited there," *id.*, at 479, the Court rejected the Eleventh Circuit's categorical holding that MacShara's trip to Florida on Burger King business could not be attributed to Rudzewicz:

> We have previously noted that when commercial activities are "carried on in behalf of" an out-of-state party those activities may sometimes be ascribed to the party, . . . at least where he is a 'primary participan[t]' in the enterprise and has acted purposefully in directing those activities. . . . Because MacShara's matriculation at Burger King University is not pivotal to the disposition of this case, we need not resolve the permissible bounds of such attribution.

Id., at 480 n. 22 (citations omitted). Here, McInnis was Vice President of Sales, and Shingleton was Regional Director of Sales. Shingleton's four trips to Alabama to sell Snap products could thus arguably be attributed to McInnis. However, because physical presence in Alabama is not required to hold these two perpetrators liable for their acts directed toward Alabama, the Court "need not resolve the permissible bounds of such attribution." It suffices that the Complaint and Petitioners' affidavits permit an inference that they directed sales efforts toward Alabama, that the fix a flat that killed Mr. Daniel was sold in Alabama, and that the sale was related to Defendants' sales efforts. It follows that the Supreme Court of Alabama was quite

correct to conclude that the assertion of *in personam* jurisdiction over McInnis and Shingleton was proper.[8]

Calder v. Jones, 465 U.S. 783 (1984), also supports the Supreme Court of Alabama's decision, as it affirmed assertions of jurisdiction in California over an editor and a reporter of the *National Enquirer* who were residents of Florida. Shirley Jones sued them and the *Enquirer* in California, alleging they had libeled her. Petitioner South, the reporter, traveled to California frequently, but denied by affidavit that he visited California to research the relevant article. *Id.*, at 785, n. 4. The Court expressly did not rely for its holding on the alleged visit. *Id.* Petitioner Calder was also a Florida resident, but had been to California only twice – once on a pleasure trip before the publication of the article and once afterwards to testify in an unrelated matter. *Id.*, at 786. He had "no other relevant contacts with

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[8] The immateriality of Petitioners' affidavits is highlighted by the following holding from *Burger King*:

> Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State. . . . [I]t is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

Burger King, 471 U.S. at 476 (citations omitted; emphasis in original). As "commercial actor[s]," *id.*, Petitioners' efforts to market their most profitable product to the residents of numerous states, including Alabama, surely amount to purposeful availment sufficient to confer personal jurisdiction on Alabama courts.

California." *Id.* The California Court of Appeal nonetheless:

> concluded that a valid basis for jurisdiction existed on the theory that petitioners intended to, and did, cause tortious injury to respondent in California. The fact that the actions causing the effects in California were performed outside the State did not prevent the State from asserting jurisdiction over a cause of action arising out of those effects.

Id., at 787. This Court approved "of the 'effects' tests employed by the California court." *Id.*, at 787, n. 6. The fact that Petitioners' actions causing an effect in Alabama may have occurred outside Alabama do not prevent Alabama from asserting jurisdiction over a cause of action arising out of that effect.

In *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), the Court held: "Respondent's regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine." *Id.*, at 773-74. The same is true of Snap and its principals, whose regular sales of fix a flat in Alabama suffice to support an assertion of jurisdiction in a wrongful death action based on the explosion of the contents of fix a flat, for "[r]egular monthly sales of thousands of [products] cannot by any stretch of the imagination be characterized as random, isolated, or fortuitous." *Id.*, at 774. It can be inferred from the allegation that fix a flat constituted fifty percent of the revenue of Snap that substantial numbers of sales occurred in Alabama at the relevant times. Petitioners, as the persons individually responsible for the creation and sale of this dangerous product, cannot be said to have established only "random, isolated, or fortuitous" contacts with Alabama.

In any event, "it is 'fair' to compel respondent to defend a multi-state lawsuit in New Hampshire seeking

nationwide damages for all copies of the five issues in question, even though *only a small portion of those copies were distributed in New Hampshire." Id.*, at 775. Thus, even if only a small percentage of the sales of fix a flat occurred in Alabama, *Keeton* supports a holding that efforts to promote those sales support the exercise of *in personam* jurisdiction over Petitioners. This holds true even if only part of their sales efforts were directed at Alabama: "But respondent is carrying on a 'part of its general business' in New Hampshire, and that is sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire." *Id.*, at 779-80. Petitioners have not denied making *any* efforts to sell fix a flat in Alabama; they have only denied *repeated trips* to Alabama that *directly* resulted in sales of fix a flat in Alabama. (App. A to Petition, pp. 8a-10a.) By negative inference, it can be concluded that they made efforts directed toward customers in Alabama, even if only from their offices in North Carolina, which directly or indirectly resulted in sales in Alabama. Thus, the record supports a conclusion that Petitioners have conducted, in part, their tortious activity in, or at least directed toward, Alabama.

In footnote 13, the *Keeton* Court held that the inquiry would remain "open upon remand" as to whether "Larry Flynt, the publisher, editor and owner of the magazine," was subject to jurisdiction in New Hampshire. *Keeton*, 465 U.S. at 781, n. 13. Because the Court of Appeals found no jurisdiction over the corporation, "it did not inquire into the propriety of jurisdiction over" Flynt. *Id.* The allegations against Petitioners here of personal tortious involvement in knowingly directing this dangerous product at the national market and Alabama in particular help establish "the propriety of jurisdiction." *Id.*

CONCLUSION

Petitioners could have said to themselves, "we better not sell fix a flat in Alabama because if we kill someone there, we might get sued." They could have prevented Snap from marketing fix a flat in Alabama. Instead, Petitioners took affirmative action toward selling fix a flat in Alabama. They have admitted personal presence in Alabama to conduct sales efforts for the corporations for which they were sales executives and later chief executives. They have not denied conducting other sales efforts directed toward Alabama. This record would not support a conclusion by this Court that the trial court and the Supreme Court of Alabama manifestly erred in holding that McInnis and Shingleton had not shown an absence of sufficient contacts with Alabama. In any event, there is no final judgment presented for review, so this Court cannot, or at least should not, exercise jurisdiction over this Petition.

Respectfully submitted,

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April 5, 2002

APPENDIX A

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased,

Plaintiff,

VS:

PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E and/or F, the person, firm or corporation who formulated, manufactured, sold, labeled,

CIVIL ACTION

AMENDED COMPLAINT

NO:CV-98-1113

(Filed Jun. 2, 1999)

packaged, supplied and/or distributed the Fix-A-Flat *Non-Explosive Formua* aerosol tire sealant/inflator involved in the accident made the basis of this suit; G, H, I, J, K and/or L, the person, firm or corporation who packaged the Fix-a-Flat *Non-Explosive Formula* aerosol tire sealant/inflator involved in the accident made the basis of this suit; M, N, O, P, Q and/or R, the person, firm or corporation who modified, converted and/or altered the tire and rim assembly involved in the accident made the basis of this suit: all of whose true names and legal identities are otherwise unknown to the Plaintiff at this time, but will be substituted by amendment when ascertained, individually and jointly,

Defendants.

GENERAL ALLEGATIONS

1. Plaintiff is a resident of the State of Alabama.

2. Defendant Nationwide Industries, Inc. is the corporate predecessor to defendant Snap Products, Inc. which is the corporate predecessor to defendant Pandora Manufacturing, Inc. These defendants are, or have been, residents of the state of North Carolina, with a principal place of business located as 4117 North Roxboro Road, Suite 201, Durham, North Carolina.

3. Defendant Pennzoil – Quaker State Company (f/k/a Pennzoil Products Company) is a resident of the state of Texas which owns, and is a corporate successor to, defendants Nationwide Industries, Inc.; Snap Products, Inc.; Snap Automotive Products, Inc.; and Pandora Manufacturing, Inc.

4. Defendants Sam McInnis ("McInnis"), Michael Borka ("Borka"), and Tim Shingleton ("Shingleton") were, at all times relevant hereto, residents of the state of North Carolina and were either employed in managerial capacities, or were owners and/or officers of defendants Nationwide Industries, Inc.; and/or Snap Products, Inc.; and/or Snap Automotive Products, Inc.; and/or Pandora Manufacturing, Inc. and in such capacities acted as agents for the companies.

5. Defendant Snap Automotive Products, Inc. is a Delaware corporation with its principal residence located in North Carolina.

6. Defendant Hughtone Industries, Inc. ("Hughtone") is a Florida corporation and defendant Paul Hughett ("Hughett") is an owner/officer of the company who at all relevant times acted as an agent for Hughtone.

7. Defendant Montfort A. Johnsen and Associates, Ltd. ("Johnsen & Assoc.") is an Illinois corporation and defendant Montfort A. Johnsen ("Johnsen") is an owner and/or officer of the company who at all relevant times acted as an agent for Johnsen & Assoc.

8. Defendant Safety Consulting Engineers, Inc. ("SCE") is an Illinois corporation and defendant James C.

Dahn ("Dahn") is an owner and/or officer and/or employee of SCE who at all relevant times acted as an agent for SCE.

9. Defendant Sweat Tire Company, Inc. is a resident of the state of Alabama.

10. Defendant Aerofil Technologies, Inc. is a resident of the state of Missouri and at all relevant times hereto filled, packaged, and/or distributed the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product.

11. At all times relevant hereto, defendants Pandora Manufacturing, Inc., formerly known as Snap Products, Inc.; Snap Products, Inc.; Snap Automotive Products, Inc.; Pennzoil – Quaker State Company; and Nationwide Industries, Inc. were engaged in the business of manufacturing and marketing an aerosol tire inflator product ("fix a flat") throughout the United States, including the state of Alabama.

12. Since at least 1979, up until 1993, defendant Nationwide Industries, Inc. ("Nationwide") marketed and sold the aerosol tire inflator product labeled "Snap fix a flat." In June 1993, Nationwide was sold and the name of the company was changed to Snap Products, Inc. ("Snap").

13. Defendant Sam McInnis ("McInnis") was first employed with Nationwide in March, 1990 and he continued with the company through the 1993 change to Snap Products, Inc.

14. Mr. McInnis became familiar with the "fix a flat" aerosol tire inflator product when he started with Nationwide in 1990 as sales manager. Mr. McInnis was put in

charge of everyday operations for Snap in the summer of 1994, and he and defendants Borka and Shingleton eventually bought the company in April 1995 by forming defendant Snap Automotive Products, Inc.

15. The "fix a flat" aerosol tire inflator product is, and has been, the single largest revenue generating product sold by Nationwide/Snap, and of approximately 70 company products, sales of the "fix a flat" product constitute approximately half the company's revenue.

16. As of 1990, when Mr. McInnis became director of marketing for Nationwide, the "fix a flat" aerosol tire inflator product was the major product Nationwide was marketing.

17. During the 1980s, Nationwide marketed the "Snap fix a flat" aerosol tire inflator product which then contained flammable propane/butane propellants. The propellant in a tire inflator serves to inflate the tire when the product is transferred into a tire. The sealant material in the tire inflator is intended to be transferred into a tire to plug a hole.

18. The propane/butane propelled "fix a flat" product (first generation product) was sold through 1989.

19. The first generation "fix a flat" tire inflator with the propane/butane propellants was implicated in numerous tire explosion accidents where claims were made that the flammable propellants from the product ignited when subjected to tire rim welding activity performed on a tire rim with a tire attached that contained the flammable gas from the "fix a flat" product.

20. Tire explosion accident claims also implicated the first generation "fix a flat" product in connection with tire plug repairs involving a tire reamer, or file, which created friction and/or sparks that ignited the flammable gas from the "fix a flat" product.

21. In response to the first generation "fix a flat" tire explosion accidents involving rim welding and tire reaming activity, Nationwide took action in 1989-1990 to (1) properly label the existing first generation propane/butane "fix a flat" product with graphic transferable warning labels advising the product user to transfer a warning sticker from the can to the tire to inform anyone coming in contact with the tire that it contained a flammable/explosive gas; (2) move toward designing out the flammable/explosive risk with a flammable propellant tire inflator product by developing a second generation non-flammable propellant hydrochlorofluorocarbon ("HCFC") product; and (3) disseminate safety bulletins nationwide to tire repair personnel to inform them of the flammable/explosive risks associated with flammable propellant aerosol tire inflator products.

22. The transferable tire explosion warning labels for the "fix a flat" product were utilized during the last year of the first generation product's marketing and sale in 1989.

23. The late first generation "fix a flat" product labeling advised the consumer that the product was "Extremely Flammable" and contained propane/butane explosive gases which could cause severe personal injury if tire reaming or rim welding occurred on tires or rims with the "fix a flat" product contained in the tires. The

warnings also stated the need to remove the tire from the rim, before performing any repairs, to avoid the explosion risks associated with the flammable tire inflator.

24. At the time Nationwide was first marketing its second generation HCFC non-flammable propellant "fix a flat" tire inflator product in the 1990-1991 time frame, the United States government was considering banning competitor flammable propellant tire inflator products, regardless of the warnings labeling on the products, because of tire explosion risks. Nationwide's position at that time was that the flammable propellant tire inflator products should be banned because the second generation "fix a flat" non-flammable HCFC propellant technology designed out the explosive risks normally associated with flammable propellant tire inflator products.

25. In 1990-1991 when the second generation "fix a flat" HCFC non-flammable propellant tire inflator product was first marketed, Mr. McInnis, as sales manager and "president" of Nationwide, used the non-flammability characteristics of the second generation "fix a flat" product as a competitive marketing advantage in differentiating the non-flammable second generation "fix a flat" product from the flammable propellant competitor tire inflator products.

26. As of 1991, Mr. McInnis became successful in convincing retail customers not to purchase the flammable propellant competitor tire inflator products that had graphic tire explosion warning stickers attached to the front of the cans.

27. On December 18, 1991, while Mr. McInnis was touting the safety aspects of the second generation non-

flammable HCFC propellant "fix a flat" product, Mr. McInnis tested a competitor tire inflator product manufactured by "STP." In testing the STP product, Mr. McInnis concluded that the STP product was flammable and was comparable to the propane/butane propellant tire inflator products.

28. On March 5, 1992, Nationwide and Mr. McInnis determined that the "STP" tire inflator product, which was labeled as a "non-explosive formula" product, utilized flammable/explosive dimethyl ether ("DME") as the propellant.

29. On March 5, 1992, Nationwide and Mr. McInnis acknowledged that DME is a highly flammable chemical that poses a dangerous fire and explosion hazard. Nationwide and Mr. McInnis also acknowledged that STP was compounding the explosion hazard associated with the STP DME tire inflator by labeling the product as a "non-explosive formula" because such labeling may lead some mechanics to disregard a need to remove the tire from the rim before performing repairs.

30. As of March 1992, Nationwide and Mr. McInnis understood that the "fix a flat" HCFC non-flammable second generation product was superior, with regard to safety, to the STP DME product as the "fix a flat" second generation product would not combust with any level of dilution with air inside a tire, unlike the STP DME product.

31. By at least 1992, the graphic and ostensible tire explosion transferable warning labels became the custom and standard in the aerosol tire inflator business for flammable propellant tire inflator products. The warnings

labeling existed because of the foreseeability that welding on a tire rim, with an attached tire containing a flammable gas tire inflator product, could ignite the flammable gas and cause a tire explosion.

32. As of 1992, Nationwide and Mr. McInnis understood that major retail customers preferred to purchase a non-flammable tire inflator product, as opposed to a flammable propellant product that could explode a tire.

33. As of 1993, Nationwide/Snap, and Mr. McInnis, felt very strongly about the safety aspects associated with the non-flammable HCFC second generation "fix a flat" product. In 1993, Nationwide/Snap and Mr. McInnis opined that manufacturers of flammable propellant tire inflators were irresponsible, and deceitful, regardless of warnings labeling utilized, and were sacrificing public safety in the interest of corporate profits by ignoring a serious public safety risk associated with flammable propellant tire inflator products.

34. In 1993, the United States government, under the Clean Air Act, Title 42 U.S.C. Section 7671i(d)(1)(A) notified Nationwide/Snap that the HCFC second generation "fix a flat" propellant was being phased out because it depleted the atmospheric ozone layer. The governmental order banning use of HCFC propellants for products such as tire inflators was to take effect at the end of 1993.

35. Because of the impending governmental ban on the second generation "fix a flat" HCFC non-flammable propellant, Nationwide/Snap, and Mr. McInnis, in July of 1993 evaluated potential propellants for a replacement

(third generation) "fix a flat" product to be sold starting in 1994.

36. In July of 1993, Mr. McInnis considered use of a propellant known as "134A" for the third generation "fix a flat" product which was to be sold starting in 1994. 134A is a non-flammable and non-explosive propellant which could be used in a tire inflator product. However, Mr. McInnis ruled out 134A for use in the upcoming third generation "fix a flat" tire inflator because of 134A's cost.

37. As of July 1993, Mr. McInnis advocated, and chose, use of DME for the upcoming third generation "fix a flat" product, to be sold starting in 1994, because DME was significantly less expensive than non-flammable 134A.

38. The third generation "fix a flat" tire inflator product, with the DME propellant, was first marketed and sold in early 1994. The product was labeled: **"NEW fix a flat NON-EXPLOSIVE FORMULA."** It was Mr. Mcinnis' decision to put the **"NON-EXPLOSIVE FORMULA"** label on the front of the third generation "fix a flat" DME product.

39. During 1990-1993, while Nationwide/Snap and Mr. McInnis were marketing their second generation HCFC non-flammable propellant "fix a flat" product, the company spent significant sums of money educating the public, and the tire inflator industry, as to the safety benefits of a non-flammable propellant tire inflator product in view of foreseeable rim welding and tire reaming activity.

40. Despite the fact that the third generation "fix a flat" product contained the flammable/explosive DME propellant, the product was labeled as a **"NON-EXPLOSIVE FORMULA"** because it was important for Snap's sales/marketing activities to continue projecting the product as "safe," "non-flammable," and "non-explosive" the same way the truly non-explosive second generation HCFC "fix a flat" had been marketed.

41. At the time the third generation "fix a flat" DME propellant tire inflator product was first marketed in early 1994, the STP DME tire inflator Nationwide/Snap previously tested in 1991 and 1992 (labeled as a "non-explosive formula") had been recalled from the market because of safety issues associated with tire explosion accidents.

42. On March 22, 1994, shortly after the third generation DME "fix a flat" product was first marketed, one of Snap's principal competitors, Radiator Specialty Company, ("RSC") communicated to Snap, and Mr. McInnis, that the third generation "fix a flat" DME product was explosive and was mislabeled as a **"NON-EXPLOSIVE FORMULA."**

43. On March 31, 1994, Mr. McInnis, at the invitation of RSC, visited RSC to meet with their representatives to discuss flammability/explosivity issues associated with the "fix a flat" DME product. At the meeting with RSC personnel on March 31, 1994, Mr. McInnis acknowledged to RSC that the DME "fix a flat" product was, in fact, explosive and may have to be recalled, which could cost millions of dollars, could cost Mr. McInnis his job, or could put Snap out of business.

44. Mr. McInnis also stated to RSC representatives on March 31, 1994, that Snap carried a $25,000,000 insurance policy covering the company for product liability risks.

45. On April 11, 1994, Mr. McInnis acknowledged to other Snap personnel that he agreed with the RSC findings that the DME "fix a flat" product was flammable and explosive. However, Mr. McInnis, also on April 11, 1994, had at least one attorney write to RSC threatening RSC with a lawsuit for allegedly falsely claiming that the "fix a flat" DME product was flammable/explosive.

46. In response to the RSC claims that the "fix a flat" DME product was mislabeled as a **"NON-EXPLOSIVE FORMULA,"** Mr. McInnis sought to have the product selectively tested. On April 21, 1994, an engineering firm known as "Dustech" evaluated the "fix a flat" product at Mr. McInnis' request and concluded that use of the DME propellant in the "fix a flat" product was conceptually similar to the use of propane regarding fire/explosion considerations. Dustech, through chemist William Cruice, confirmed that the third generation DME "fix a flat" **"NON-EXPLOSIVE FORMULA"** was, in fact, explosive and the test results were given to Mr. McInnis.

47. On or about April 25, 1994, Mr. McInnis, along with "consultlants" Montfort A. Johnsen ("Johnsen"), and Paul Hughett ("Hughett") attended a meeting in Kansas City, Missouri, with a customer (Western Auto Parts Company). Johnsen and Hughett had helped design and develop the third generation DME "fix a flat" product.

48. At the meeting with Western Auto on or about April 25, 1994, Mr. McInnis, with consultants Hughett

and Johnsen, tried to sell Western Auto the DME "fix a flat" product. However, Western Auto informed McInnis, Johnsen, and Hughett that Western Auto's testing of the "fix a flat" revealed that the product was flammable/explosive and Western Auto would not purchase such a product.

49. In response to Western Auto's concerns regarding the flammability/explosivity of the DME fix a flat product. Mr. McInnis informed Western Auto that if any accidents occurred involving the DME fix a flat product Snap would fully indemnify and reimburse Western Auto for any liability incurred under the provisions of Snap's $25,000,000 product liability insurance policy. Western Auto decided not to do any business with Snap.

50. On or about May 12, 1994, Snap and/or Mr. McInnis had tire explosion testing performed by defendants Hughtone, SCE, Hughett, and Dahn on the "fix a flat" DME product. On or about May 12, 1994, various mixtures of the "fix a flat" DME tire inflator product were inserted into Ford Explorer tire and rim assemblies to be ignited by a remote control spark plug igniter. This testing revealed that certain mixtures of the "fix a flat" DME product with air in a tire were explosive and could propel the Ford Explorer tire and rim assemblies as much as 252 feet into the air.

51. Despite test results by Hughtone and SCE in the spring of 1994 indicating the DME "fix a flat" product was explosive, Hughtone, SCE, Johnsen & Assoc., Hughett, Dahn, Johnsen, and Snap conspired to selectively omit tire explosion test sequences from testing reports which were sent to Snap's customers and the

Consumer Product Safety Commission. The selectively edited testing reports created the illusion that the "fix a flat" DME product was safe and non-explosive.

52. On October 5, 1994, Mr. McInnis hired a chemical engineer, Reese Howle, to perform additional remote control tire explosion tests on various mixtures of the "fix a flat" DME product with air inside tires. This testing was performed to simulate rim welding activity to determine whether mixtures of the "fix a flat" product with air inside a tire could explode tires.

53. On October 7, 1994, Reese Howle performed remote control tire explosion tests which confirmed that the "fix a flat" DME product could violently explode a tire. Mr. Howle then reported the test results to Mr. McInnis on this same day.

54. Despite Snap's knowledge of the explosive characteristics of the third generation DME "fix a flat" product, Snap and its "consultants" (Hughett, Johnsen, and Dahn) told concerned retail customers in 1994 that the "fix a flat" DME product had been thoroughly tested for safety, and that the product could not explode tires.

55. Because Snap utilized the less expensive DME propellant for the third generation "fix a flat" product (as opposed to the more costly 134A non-flammable propellant), and because Snap labeled their DME tire inflator as a **"NON-EXPLOSIVE FORMULA,"** Snap was able to enjoy a competitive cost marketing advantage over competitors who utilized the non-flammable 134a propellant.

56. In April 1995, defendants McInnis, Borka, and Shingleton formed Snap Automotive Products, Inc., and

purchased Snap Products, Inc. from the then owners of the company, the "Bishop Estate" in Hawaii.

57. At the time defendants McInnis, Borka, and Shingleton formed Snap Automotive Products, Inc., and bought Snap Products, Inc. from the "Bishop Estate," these defendants knew the DME "fix a flat" product was explosive and they had no intention to recall, or relabel, the product regarding flammability/explosivity risks.

58. On November 21, 1995, James Bergey-Lyon injected Snap's **"NEW fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product into a partially deflated tubeless tire.

59. Subsequent to injecting the Snap **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product into a partially deflated tire, Mr. Lyon was misled by Snap's label of non-explosiveness to believe that he did not need to remove the tire from the rim before he welded on the rim.

60. On November 21, 1995, James Bergey-Lyon was seriously injured in a tire explosion accident resulting from welding activity on a tire rim which ignited the DME flammable gas from the **"NEW fix a flat NON-EXPLOSIVE FORMULA"** product.

61. Snap, McInnis, Shingleton, and Borka subsequently learned of Mr. Lyon's accident in the spring or summer of 1996, but chose not to relabel or recall the "fix a flat" product labeled as containing a **"NON-EXPLOSIVE FORMULA."** These defendants also received information from Mr. Lyon's expert witness' reports further

confirming that the "fix a flat" DME product was explosive and mislabeled.

62. On April 12, 1996, a second injurious rim-welding tire explosion accident occurred in Arizona involving an individual named Mark Malinkovich when Mr. Malinkovich was misled by the "NON-EXPLOSIVE" label on the "fix a flat" DME tire inflator product and his welding activity ignited the explosive propellant.

63. After learning of the additional tire explosion accident in Arizona, Snap and its principals, McInnis, Borka, and Shingleton, chose not to recall or relabel the third generation "fix a flat" DME product labeled as a "NON-EXPLOSIVE FORMULA."

64. On October 1, 1996, an individual named Gary Olson sustained serious injuries in a rim welding tire explosion accident in Sandstone, Minnesota, when he welded on a tire rim with a tire attached that contained a flammable mixture of Snap's **"fix a flat" NON-EXPLOSIVE FORMULA"** DME tire inflator product.

65. At the time of Mr. Olson's accident on October 1, 1996, Mr. Olson was misled by defendants' labeling of the "fix a flat" product into believing that he did not otherwise need to remove the tire from the rim before commencing rim welding activity.

66. As a result of learning of Mr. Olson's accident, defendants Snap, McInnis, Borka, and Shingleton made no effort to recall the dangerous DME "fix a flat," or to place any information on the product that it contained an explosive gas.

67. On or about June 4, 1997, Joe Ed Daniel, attempted to affix a small metal block, or lug, to a motor grader rim with a tire attached which had been previously inflated with two cans of the DME **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product.

68. Mr. Daniel, while performing a brief tacking repair to affix the metal block to the motor grader tire rim, was killed when the flammable DME propellant from the "fix a flat" product ignited and propelled the tire and/or components of the rim assembly into him thereby resulting in his being decapitated.

69. Mr. Daniel, and the individuals who previously purchased and injected the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product into the subject motor grader tire, were disarmed by the product's labeling into believing the motor grader tire did not have to be removed from the rim before the tacking procedure was performed.

70. Less than two weeks prior to Mr. Daniel's accident, the subject motor grader tire had been converted from a "tube type" tire to a "tubeless" tire by defendant Sweat Tire Company, Inc.

71. In November 1997, McInnis, Shingleton, and Borka sold Snap Products, Inc. to Pennzoil Products Company, n.k.a. Pennzoil – Quaker State Company.

72. In February 1999, Pennzoil – Quaker State Company announced a $25,000,000 nationwide recall of the explosive DME "fix a flat" product and reformulated the product by using the non-flammable 134A propellant instead of explosive DME.

FIRST CAUSE OF ACTION

Plaintiff, PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, alleges against the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, as follows:

73. Plaintiff realleges all of the allegations contained in paragraphs 1 through 72 of the GENERAL ALLEGATIONS as if set forth fully herein.

74. This action is brought pursuant to the Alabama Extended Manufacturers Liability Doctrine.

75. The **"fix a flat NON-EXPLOSIVE FORMULA"** part number S455K, DOT 2Q involved in the accident made the basis of this suit was formulated, manufactured, labeled, packaged, sold, supplied and/or distributed by the Defendants, PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL

HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R.

76. Prior to June 4, 1997, the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, either formulated, manufactured, labeled, packaged, sold, supplied and/or distributed the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator/sealant involved in the accident made the basis of this suit.

77. At the time of the accident made the basis of this suit, the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator/sealant was in substantially the same condition as it was when it originally left the control of the Defendants, PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS,

INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R.

78. At the time the **"fix a flat NON-EXPLOSIVE FORMULA"** involved in the accident made the basis of this suit was formulated, manufactured, labeled, packaged, sold, supplied and/or distributed, it was in a defective and unreasonably dangerous condition and was not reasonably safe for its intended uses.

79. The injuries and subsequent death of Joe Ed Daniel were the direct and proximate result of the defective condition of the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator/sealant.

WHEREFORE, Plaintiff PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, demands judgment against the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL –

QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, separately and severally, for punitive damages, for the wrongful death of the said Joe Ed Daniel, plus interest and costs in excess of the jurisdictional limits of this Court.

SECOND CAUSE OF ACTION

PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, alleges against the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, as follows:

80. Plaintiff realleges all of the allegations contained in paragraphs 1 through 79 of the GENERAL ALLEGATIONS and FIRST CAUSE OF ACTION as if fully set out herein and further states as follows:

81. Plaintiff further alleges that the injuries and subsequent death of Joe Ed Daniel was proximately caused by the negligence of the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, in one or more of the following respects:

a. Negligently formulating and/or manufacturing the **"fix a flat NON-EXPLOSIVE FORMULA"** involved in the accident made the basis of this suit;

b. Negligently selling, supplying and/or distributing the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit when the Defendants knew or in the exercise of reasonable care, should have known that said product referred to above was in a defective and unreasonably dangerous condition;

c. Negligently selling, supplying and/or distributing a flammable and explosive product when other non-flammable and non-explosive formulations were available in the marketplace for the purpose of providing emergency and/or temporary tire repairs;

d. Negligently failing to provide adequate warnings to the decedent and others similarly situated as to inherent dangers associated with the use *of* **"fix a flat NON-EXPLOSIVE FORMULA"** of which the Defendants were aware;

e. Negligently failing to warn the decedent and others similarly situated of the dangerous, flammable and explosive propensities of the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

f. Negligently labeling and/or packaging the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

g. Negligently failing to adequately test the explosiveness and/or flammability of the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

h. Negligently failing to adequately test the **"fix a flat NON-EXPLOSIVE FORMULA"** to determine that it was safe for its intended uses and purposes;

i. Negligently misrepresenting that the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit was a *Non-explosive Formula*, when the Defendants knew or should have known of its dangerous flammable and/or explosive characteristics;

j. Negligently continuing to manufacture, sell, supply and/or distribute **"fix a flat NON-EXPLOSIVE FORMULA"** after said product was known by the Defendants to be flammable, explosive and unreasonably dangerous for its intended uses;

k. Negligently continuing to manufacture, sell, supply and/or distribute **"fix a flat NON-EXPLOSIVE FORMULA"** which was extremely flammable and explosive after a safe formulation was available;

l. Negligently failing to take appropriate measures to remedy the defective nature of the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

m. Negligently failing to remove and/or recall **"fix a flat NON-EXPLOSIVE FORMULA"** from the marketplace after becoming aware of the flammable, explosive and unreasonably dangerous propensities of the product.

WHEREFORE, Plaintiff PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, demands judgment against the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, separately and severally, for punitive damages, for the wrongful death of the said Joe Ed Daniel, plus interest and costs in excess of the jurisdictional limits of this Court.

THIRD CAUSE OF ACTION

Plaintiff PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, alleges against the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, as follows:

82. Plaintiff realleges all of the allegations contained in paragraphs 1 through 81 of the GENERAL ALLEGATIONS and FIRST AND SECOND CAUSES OF ACTION as if set forth fully herein.

83. Plaintiff further alleges that the injuries and subsequent death of the said Joe Ed Daniel was proximately caused by the wanton conduct of the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY);

NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, in one or more of the following respects:

a. Wantonly formulating and/or manufacturing the **"fix a flat NON-EXPLOSIVE FORMULA"** involved in the accident made the basis of this suit;

b. Wantonly selling, supplying and/or distributing the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit when the Defendants knew or in the exercise of reasonable care, should have known that said product referred to above was in a defective and unreasonably dangerous condition;

c. Wantonly selling, supplying and/or distributing a flammable and explosive product when other non-flammable and non-explosive formulations were available in the marketplace for the purpose of providing emergency and/or temporary tire repairs;

d. Wantonly failing to provide adequate warnings to the decedent and others similarly situated as to inherent dangers associated with the use of **"fix a flat NON-EXPLOSIVE FORMULA"** of which the Defendants were aware;

e. Wantonly failing to warn the decedent and others similarly situated of the dangerous, flammable and explosive propensities of the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

f. Wantonly labeling and/or packaging the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

g. Wantonly failing to adequately test the explosiveness and/or flammability of the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

h. Wantonly failing to adequately test the **"fix a flat NON-EXPLOSIVE FORMULA"** to determine that it was safe for its intended uses and purposes;

i. Wantonly misrepresenting that the **"Fix-A-Flat NON-EXPLOSIVE FORMULA"** made the basis of this suit was a *Non-explosive Formula*, when the Defendants knew or should have known of its dangerous flammable and/or explosive characteristics;

j. Wantonly continuing to manufacture, sell, supply and/or distribute **"fix a flat"** as a **"NON-EXPLOSIVE FORMULA"** after said product was known by the Defendants to be flammable, explosive and unreasonably dangerous for its intended uses;

k. Wantonly continuing to manufacture, sell, supply and/or distribute **"fix a flat NON-EXPLOSIVE FORMULA"** which was extremely flammable and explosive after a safe formulation was available;

l. Wantonly failing to take appropriate measures to remedy the defective nature of the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit;

m. Wantonly failing to remove and/or recall **"fix a flat NON-EXPLOSIVE FORMULA"**

from the marketplace after becoming aware of the flammable, explosive and unreasonably dangerous propensities of the product.

WHEREFORE, Plaintiff PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, demands judgment against the Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, separately and severally, for punitive damages, for the wrongful death of the said Joe Ed Daniel, plus interest and costs in excess of the jurisdictional limits of this Court.

FOURTH CAUSE OF ACTION

PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, alleges against the Defendants SWEAT TIRE COMPANY INCORPORATED, M, N, O, P, Q, and R, as follows:

84. Plaintiff realleges all of the allegations contained in paragraphs 1-83 of the GENERAL ALLEGATIONS and FIRST, SECOND, and THIRD CAUSES OF ACTION as if fully set out herein.

85. Plaintiff further alleges that the injuries and subsequent death of the said Joe Ed Daniel was proximately caused by the negligence of the Defendants SWEAT TIRE COMPANY, INCORPORATED, M, N, O, P, Q and/or R, as follows:

a. Negligently altering the configuration of the tire and rim assembly involved in the accident made the basis of this suit;

b. Negligently converting the tire and rim assembly involved in the accident made the basis of this suit from a "tube-type" assembly to a "tubeless" assembly.

WHEREFORE, Plaintiff PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, deceased, demands judgment against the Defendants SWEAT TIRE COMPANY, INCORPORATED, M, N, O, P, Q and R, separately and severally, for punitive damages, for the wrongful death of the said Joe Ed Daniel, plus interest and costs in excess of the jurisdictional limits of this Court.

FIFTH CAUSE OF ACTION

PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, alleges against the Defendants SWEAT TIRE COMPANY, INCORPORATED, M, N, O, P, Q and R, as follows:

86. Plaintiff realleges all of the allegations contained in paragraphs 1 through 85 of the GENERAL ALLEGATIONS and FIRST, SECOND, THIRD, AND FOURTH CAUSES OF ACTION as if fully set out herein and further states as follows:

87. Plaintiff further alleges that the injuries and subsequent death of the said Joe Ed Daniel was proximately caused by the wanton conduct of the Defendants SWEAT TIRE COMPANY, INCORPORATED, M, N, O, P, Q and/or R, as follows:

a. Wantonly altering the configuration of the tire and rim assembly involved in the accident made the basis of this suit;

b. Wantonly converting the tire and rim assembly involved in the accident made the basis of this suit from a "tube-type" assembly to a "tubeless" assembly.

SIXTH CAUSE OF ACTION

PAMELA ALICE LITTLE DANIEL, Administratrix of the Estate of JOE ED DANIEL, Deceased, alleges against Defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON;

AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, as follows:

88. Plaintiff realleges all of the allegations contained in paragraphs 1 through 87 of the GENERAL ALLEGATIONS and FIRST, SECOND, AND THIRD CAUSES OF ACTION as if fully set out herein and further states as follows:

89. Plaintiff further alleges that the injuries and subsequent death of Joe Ed Daniel was proximately caused by a civil conspiracy among two or more defendants combining to exercise wanton reckless indifference to the safety of members of the public, including plaintiff's decedent, as follows:

a. Wantonly formulating and/or manufacturing the **"fix a flat NON-EXPLOSIVE FORMULA"** involved in the accident made the basis of this suit;

b. Wantonly combining to misrepresent that the **"fix a flat NON-EXPLOSIVE FORMULA"** made the basis of this suit was a "non-explosive formula," when the defendants knew or should have known of its dangerous flammable and/or explosive characteristics;

c. Wantonly combining to selectively edit and/or alter test results confirming the explosiveness of the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator to create the false impression that the product was not flammable or explosive;

d. Wantonly combining to ignore test results from credible sources indicating the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product was, in fact, explosive;

e. Wantonly combining to fail to recall the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product when confronted with substantial information indicating the product posed a dangerous fire/explosion risk;

f. Wantonly combining to contrive testing procedures to give a false impression that the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product was somehow "safe," "non-flammable," or "non-explosive";

g. Wantonly combining to tout testing protocols for the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product which defendants knew were "largely irrelevant," "invalid," and not applicable to tire inflator products in order to create a false impression that the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator made the basis of this suit was somehow "safe," "non-flammable," or "non-explosive";

h. Wantonly combining to visit concerned retail customers to falsely convey that the **"fix a flat NON-EXPLOSIVE FORMULA"** tire inflator product could not explode tires when defendants knew otherwise;

i. Wantonly failing to remove and/or recall the **"fix a flat NON-EXPLOSIVE FORMULA"** from the marketplace after becoming aware of the flammable, explosive and unreasonably dangerous propensities of the product.

WHEREFORE, plaintiff Pamela Alice Little Daniel, Administratrix of the Estate of Joe Ed Daniel, deceased, demands judgment against the defendants PANDORA MANUFACTURING, INC., formerly known as SNAP PRODUCTS, INC.; SNAP PRODUCTS, INC.; SNAP AUTOMOTIVE PRODUCTS, INC.; HUGHTONE INDUSTRIES, INC.; PAUL HUGHETT; MONTFORT A. JOHNSEN AND ASSOCIATES, LTD.; MONTFORT A. JOHNSEN; SAFETY CONSULTING ENGINEERS, INC.; JAMES C. DAHN; PENNZOIL – QUAKER STATE COMPANY (f/k/a PENNZOIL PRODUCTS COMPANY); NATIONWIDE INDUSTRIES, INC.; SAM McINNIS; MICHAEL BORKA; TIM SHINGLETON; AEROFIL TECHNOLOGY, INC.; SWEAT TIRE COMPANY INCORPORATED; A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R, separately and severally, for punitive damages, for the wrongful death of the said Joe Ed Daniel, plus interest and costs in excess of the jurisdictional limits of this Court.

Dated this 28th day of May, 1999.

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